



## Clark County, Washington **Endangered Species Act** *Information*

# The ESA and the 4(d) rule in Clark County

### **What is the ESA?**

The Endangered Species Act (ESA) is a federal law designed to protect and recover fish, wildlife, and plants that are threatened with or are in danger of becoming extinct. It requires federal and state agencies to work in coordination with local jurisdictions to recover listed species. Several species of salmon and steelhead in Clark County have already been listed as threatened under the ESA. These include summer and winter steelhead, chum and chinook salmon, and bull trout. Cutthroat trout will likely be listed in the near future. Two federal agencies may enforce ESA protections for the listed species. The National Marine Fisheries Service (NMFS) enforces protections for anadromous (lives part of its life in the ocean) fish and marine fish and wildlife; the U.S. Fish and Wildlife Service (USFWS) has primary responsibility for resident fish and wildlife.

### **What is the 4(d) rule?**

The 4(d) rule is a section of the ESA that requires NMFS and USFWS to issue regulations to protect species listed as threatened or endangered by prohibiting the “take” (i.e., kill or harm) of these species without specific written authorization. It can offer local governments or private parties assurance that their regulations, programs, and activities are legally permissible under the ESA and

consistent with the conservation of listed species. Farm/forestry practices or other activities that are not likely to kill or harm protected species are not affected by the 4(d) rule and do not require special authorization. The rule applies to any authority, agency, group, or individual involved in activities that have the potential of taking a listed species.

### **What is “take”?**

Under the ESA, “take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” The ESA makes it illegal for any person to take any species listed as threatened or endangered without authorization. Take prohibitions also apply to the habitat a listed species requires for its survival. Violating take prohibitions can result in civil or criminal penalties.

### **What are limitations to the 4(d) rule?**

Exceptions to the rule are called “limits” or “limitations.” These limits can include regulations, programs, or activities that NMFS and other agencies have determined minimize the impacts to listed species to the extent that additional federal protections are not required. Clark County is in the process of submitting its land-use regulations and other programs to NMFS and USFWS so that they will be included in a future version of the 4(d) rule as limits from take. The 4(d) rule for steelhead took effect on September 8, 2000, and the rule for salmon took effect on January 8, 2001.

### **What is Clark County doing to comply with the ESA?**

In response to the requirements of the 4(d) rule, the county has submitted to NMFS and USFWS its 4(d) Compliance Plan and Habitat Conservation Ordinance (HCO) for possible inclusion in a future version of the 4(d) rule. The county believes that the HCO is already a fish-friendly ordinance. It expects current practices related to habitat studies/evaluations, interpretation, and implementation to remain substantially unchanged. But certain modifications, unknown at this time, may be required by NMFS before the HCO is included in the 4(d) rule. It is important to remember that any changes to the HCO will include a public involvement process.

All of the county’s remaining critical areas ordinances need to be reviewed and evaluated in a similar fashion before they are submitted to NMFS and USFWS for possible inclusion in the 4(d) rule. Clark County is working to ensure that its critical areas ordinances will protect businesses, landowners, other parties and individuals, and the county from lawsuits from third parties, NMFS, or USFWS.

### **What actions are affected by the 4(d) rule?**

The 4(d) rule can affect any person whose actions “take” listed species or the habitat they require. This could include, but is not limited to:

- Destroying or altering the habitat of listed species through activities such as removal of large woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditch-

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ing, diverting, blocking or altering stream channels or surface or ground water flow.

- Discharging or dumping toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting listed species.
- Applying pesticides and herbicides in a manner that adversely affects the biological requirements of the species.

NMFS has issued “take” guidelines listing the categories of activities that ESA enforcement will focus on. You can find these guidelines on the NMFS web site at <http://www.nwr.noaa.gov/1salmon/salmesa/final4d.htm>.

Some of the activities carried out or authorized by local governments that have a high likelihood of affecting fish habitat include the following:

- Planning, zoning, and development permitting
- Erosion and sediment control
- Floodplain management
- Water use
- Stormwater discharge
- Wastewater discharge
- Road and bridge construction and maintenance
- Pesticide, herbicide, fertilizer, and other chemical use
- Riparian area protection, alteration, or development
- Wetland protection, alteration, or development

For information about salmon recovery in Clark County, contact the Clark County Endangered Species Program at (360)397-2022 or [www.saveoursalmon.com](http://www.saveoursalmon.com).



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